MICHIGAN'S ADOPTION OF UNIFORM STATE LEGISLATION.

"Uniformity is not simply a name, it is a principle, and a principle which is of the very essence of democracy, if we mean by democracy that state of society in which there is one law equable in its application to the rights of all men alike everywhere; and to achieve that ideal in matters which relate to interstate interests or transactions, there must be one law given to all the states, and such law must be secured either by federal enactment, involuntarily imposed, compulsory upon all states, irrespective of their particular desires, or it must be secured by voluntary uniform state enactment growing out of the deliberate initiative, which we believe the wiser and the safer, and the only one which is thoroughly consistent with democratic conception."
—Charles Thaddeus Terry, President of the National Conference of Commissioners on Uniform State Laws.

THE commissioners on Uniform State Laws have just filed their fourth Biennial Report to the Legislature of Michigan.

This Conference is a body composed of representatives of each State, Territory and Federal possession, who meet in annual conference under a permanent organization commonly designated the Commissioners on Uniform State Laws. The twenty-sixth annual meeting was held in Chicago last August. The commissioners consist very largely of lawyers and judges of standing and experience and of law teachers from some of the principal law schools. There are usually three representatives from each State or Territory, appointed for terms of three to five years, generally by the governor or chief executive, pursuant to statutes, which authorize the appointed commissioners to confer with the commissioners from other States and Territories for the purpose of drafting and recommending bills and measures to promote uniformity in State laws on subjects where uniformity seems practicable and desirable, such as bills and notes, sales, partnership, execution and proof of deeds and wills, taxation, warehouse receipts, marriage and divorce.

The commissioners from Michigan are Edward Cahill, Dan H. Ball, and George W. Bates.

The officers of the Conference consist of a President, Vice-President, Secretary and Treasurer elected annually. The planning of

the work and the arrangement of the program for the annual conference is done by an executive committee. The preparation of bills and measures is done by standing and special committees often acting with the assistance of recognized legal experts on the particular subject in hand, after conference and consultation with leading lawyers, judges, business men and commercial organizations. The work of the committee is reported to the annual conference where it is considered in detail, both as to substance and form, by all the Commissioners. No measures are approved until after full consideration and discussion in the conference.

This consideration frequently extends over several annual conferences. In approving proposed measures the commissioners vote by States. Since the beginning of the movement in 1890, there have been twenty-six annual conferences and every State, Territory and federal possession is now officially represented. The following uniform measures have been prepared and recommended by the Conference and adopted by the various jurisdictions to the extent indicated:

The Negotiable Instruments Act, forty-eight jurisdictions, including Alaska, Hawaii, District of Columbia, and Philippine Islands; the Warehouse Receipts Act, thirty-three States; the Bills of Lading Act, seventeen States; the Uniform Sales Act, fourteen States; the Stock Transfer Act, eleven States; the Partnership Act and the Act relating to Probate of Foreign Wills, eleven States; the Family Desertion and Non-supporting Act, nine States; the Marriage Evasion and Violation Act, four States; the Uniform Divorce Act, three States; and the Marriage License Act, which has not so far been adopted in any Jurisdiction.

Uniform State Laws in Michigan.

Under Act No. 46 of the Public Acts of Michigan of 1913, the annual allowance for the actual expenses of the commissioners and for the expenses incurred in drafting uniform laws was increased to $500.00, out of which the sum of $150.00 was paid to the National Conference March 4th, 1915, and the further sum of $200.00 was also paid April 10th, 1916, to the Conference.

The expenses of the Conference are met by the voluntary contributions of the several States and by many of the Bar Associations of the country, including the American Bar Association. This year there was contributed from all sources to the support of the Conference the sum of $5,822.46, and the disbursements were the sum of $3,915.69, leaving a balance of $1,906.77 in the treasury for the future requirements of the Conference.

The State of Michigan occupies an advanced position in the subject of Uniform State Laws. In 1905, it adopted the Negotiable Instruments Act, being the twenty-second State of the forty-eight jurisdictions to adopt the act. This act has also been approved by the Supreme Court of Michigan in cases where many of its provisions have been cited as expressive of the law on the subject.

In 1909, it adopted the Uniform Warehouse Receipts Act as the eleventh State of the thirty-three States to adopt it.

In 1913, it adopted the Uniform Stock Transfer Act as the sixth of the eleven States to adopt it.

In 1911, it adopted the Uniform Bills of Lading Act as the third State of the thirteen States to adopt it. (Iowa, Illinois, New York and Ohio having adopted it at the same time.)

In 1913, it adopted the Uniform Sales Act as the eighth State of the fourteen States to adopt it.

In 1911, it adopted the Uniform Act for the Probate of Foreign Wills as one of the four States first to adopt it.

Thus Michigan has adopted six out of the ten leading uniform acts passed by the National Conference down to and including August, 1916. This has placed Michigan among the leading States represented in the Conference on this subject. And the attitude assumed by the Legislature in the past towards the Uniform Acts submitted to it for adoption, has been that of great appreciation of the work done by the National Conference for the Promotion of Uniformity of Legislation in the United States, as being a subject which has commended itself to their best judgment and merited their cordial support, thus showing, "that it is not more law which we want—but more uniform law."

Recommendations of the Michigan Commissioners.

The Commissioners have recommended the adoption by the Legislature at the coming session of the following acts:

I. The Uniform Partnership Act.

The subject of a uniform act governing partnership was first taken up by the National Commissioners in 1903. It has been almost continuously under consideration since that time. The present act is the culmination of eight previous tentative drafts, each drawn with care and discrimination and considered at great length by the several conferences. It is believed that the present act, adopted at the meeting in Washington, October, 1914, represents an accurate, practical and just codification of the law upon one of the most important business subjects. It was originally drawn by

Professor William Draper Lewis, of the University of Pennsylvania Law School, assisted by Professor Lichtenberger of the same institution.

There are two theories as to the nature of a partnership, namely: The collective or aggregate theory and the entity or legal person theory. The National Conference adopted the collective or aggregate theory. This is what is known as the common law theory and is at present accepted in nearly all the States of the Union; but the Uniform Act combines the two theories on a satisfactory basis, recognizing the entity of the partnership, but not as a separate legal person. One of its great advantages is that it avoids certain difficulties in dealing with partnership property with reference to creditors; besides it is a compact and definite statement of the law on all the principles of partnership.

2. THE UNIFORM ACT FOR THE EXTRADITION OF PERSONS OF UNSOUND MIND.

This Act provides that a person alleged to be of unsound mind found in a State, who has fled from another State, in which at the time of his flight:

(a) he was under detention by law in a hospital, asylum or other institution for the insane as a person of unsound mind; or

(b) he had been theretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the State from which he fled; or

(c) he was subject to detention in such State, being then his legal domicile (personal service of process having been made), based on legal proceedings there pending to have him declared of unsound mind;

shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed thereto.

In such cases the executive authority of the State from which such person fled produces a copy of the commitment, decree or other judicial proceedings certified as authentic by the Governor of that State, with an affidavit showing the person to be such a fugitive; and it is the duty of the executive authority of the State in which he is found to cause him to be apprehended and secured, if found in such State; and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive; and to cause the fugitive to be delivered to such agent when he shall appear.

If no such agent appears within thirty days from the time of the apprehension, such person may be discharged.

This act becomes of great importance when it is desired to extradite a person of unsound mind who has already escaped from an asylum; there is no law at this time by means of which such person can be extradited.

3. THE UNIFORM LAND REGISTRATION ACT.

This is what is commonly known as the Torrens System, and was adopted by the Conference in 1916. In substance this Act provides for a Court of Land Registration.

In the first place, a petition must be presented to the court, which shall bring to view all the material facts and material parties before the court at once. It can only be filed by fee simple owners and must be sworn to and subscribed. Each petition is immediately filed and a notice of lis pendens is, at the same time, recorded in a proper deed book. The petition is then referred to one of the examiners of title, and on his report being filed, the court makes an order of publication, and every precaution is taken to notify any one who may have any interest in or claim against the land. The case is then set down for hearing after the due proof of the publication has been filed. Surveys are made of the land and the court makes a final adjudication of the title. The final decree differs radically from any other decree "to quiet title" in an ordinary chancery suit. For this is a proceeding *in rem* good against all the world, while the former is only good against the parties to the suit.

The final decree becomes the Certificate of Title, which is registered with the Register of Titles and never goes out of the Registrar's office. Thereafter if anyone wants to know the condition of the title, he will find it all in this ledger account. Whatever happens to the title after it has once been registered, must be registered in this ledger account to take effect against the title.

The owner is given an exact copy of the original certificate by the Registrar.

If an owner wishes to transfer a registered title, he must not only make a short deed for the transfer, which must be signed and acknowledged by husband and wife, but the owner's duplicate must be carried to the registrar's office before any voluntary transfer can be registered.

If a borrower pledges his duplicate certificate for a loan, the lender can rest assured that no other pledge or transfer can be made by the borrower without the surrender of the duplicate cer-

tificate. The duplicate certificate must always accompany every voluntary transaction with a registered title.

Land once registered is to remain forever registered and cannot be subject to rights by adverse possession or prescription.

An assurance fund is provided by a small tax of $1.00 per $1,000 of actual value, paid by everyone who registers land, to reimburse anyone who had no actual notice of any registration depriving him of any estate or interest in such land, and who is without other remedy under the act. All suits must be brought within two years after the right accrues. In actual practice the acts have been administered so perfectly that very few cases of claims against the assurance fund have arisen in the United States.[1]

The Uniform Land Registration Act has been adopted in Virginia. There are similar land registration acts in thirteen States, including California, Colorado, Illinois, Massachusetts, Minnesota, Mississippi, New York, Nebraska, North Carolina, Ohio, Oregon, South Carolina, Washington, Hawaii and the Philippine Islands, and while not exactly the Uniform Act, they are sufficiently similar to satisfy all practical requirements.

Farm Mortgage Loans and Uniform Land Registration.

The basis of a rural credit system in this country, similar to that of Europe, based on long term farm mortgages must be some method of uniform land registration by which titles will be certain and standard, and thereby become unquestioned security for bonds or debentures of any Federal system of land banks.

Uniform State laws as well as the Federal Credits Act are essential to such a system.

Mr. Eugene C. Massie, of Richmond, Va., an authority on the Torrens System, in an address on the subject of "Commercial Land Titles," made this statement in reference to the effect of such an Act: "Nothing short of registered title can give the land any of the true attributes of a commercial asset. To answer the great public needs we must make the land in a sense negotiable."

Hon. David F. Houston, Secretary of Agriculture, makes the statement before the Senate Committee on this subject, that there are only $3,500,000,000 of farm mortgage loans in this country on $40,000,000,000 worth of farm property, and says: "Still the clamor of the rural districts for capital to develop the agricultural industry is country- wide."

He also makes the statement that the rate of interest with commission on farm mortgage loans in the United States ranges from 5.3 to 10.5 per cent, the average rate in no less than twenty different

[1] Shevlin &c. Co. v. Fogarty, 130 Minn. 456, 153 N. W. 871.

states being 8 to 10 per cent; while the prevailing farm loan rates under modern rural credit systems in Germany, France, Norway, Denmark, Great Britain and Australia are only 3½ to 4 per cent.

The effect then would be that, under the proposed rural credits plan—with a Federal farm loan board and twelve regional farm land banks to give negotiability to the agricultural lands of the United States,—the aggregate, actual capital of America available in negotiable form for bankable purposes would readily be more than doubled, and thereby become one of the greatest and most dependable assets in our national finance.

The Senate Joint Committee in its report on Rural Credits to Congress, January 3rd, 1916, with the draft of a bill "to provide a system of land-mortgage credits to the United States under Federal Supervision,"[2] has this to say of necessary State legislation:

"It is well understood that the laws of the several States vary as to land titles, registry, exemptions, homestead rights, foreclosures and equity of redemption. It is, therefore, made the duty of the farm loan board to investigate these questions in each State and to declare mortgages ineligible as security for farm loan bonds in those States where the laws do not give adequate protection to those loaning on first mortgage."

Section 30 of the Rural Credits Bill, authorizing the farm loan board to declare ineligible for farm loans the lands of such State as fails to provide the necessary uniform laws relating to the conveying and recording of land titles, and the foreclosure of mortgages and other instruments securing loans, will have an important effect in securing a more prompt compliance with the State uniformity principle.

In the United States Census of 1910 now being compiled it will appear that the farm property of the United States was valued at $40,000,000,000; its value now will doubtless exceed $50,000,000,000.

"What is required," says Mr. Massie, "is a proper mechanism for effectively financing this greatest American asset."

There is every reason to believe that under a proper Federal system with effective State cooperation under uniform State laws, the American farmer will eventually enjoy the same adequate and economical use of capital which is found among the most favored agricultural countries of Europe.

The successful operation of the Federal Rural Credits Act is in fact dependent upon the universal adoption of the Torrens System, so that what is so essential to the prosperity of the farmer, can only be made available by the operation of that system. His registered

[2] House Document No. 494, p. 16.

title becomes a commercial asset and makes the land negotiable. It acquires something of the same "fluidity or negotiability" of land as has been brought about in the case of personal property by these uniform acts.

The Uniform Torrens Act Means of Uniformity in Registration of Land Titles.

It is claimed that the Torrens System of Land Registration is revolutionary and that it is an attempt at radical reform void of practical benefit, but the fact that fourteen states have already adopted the Torrens System for their own use, and that the majority of these are among the leading states of the country,—that fact is proof that the Torrens System has been accepted in our country as "a desirable, legal process, and points unalterably to the need of immediate attention and legislative action throughout the country."

The main argument against the adoption of the Torrens System is drawn from the antiquity of the old law and the old custom, but nevertheless it is only a part of true wisdom to see if perchance there may be "defects discovered, improvements inaugurated and conditions bettered by extending through the process of unification, even though such policies may have been in themselves reversals of what had come to be considered settled doctrines."

Tested by individual opinion of those whose opinions are entitled to great consideration and persuasive force, we are drawn to regard the Torrens System as not only expedient, but, in the highest degree, beneficient and desirable.

Mr. Justice Hughes, when Governor of New York, signed a bill acknowledging the system after a thoroughgoing debate and investigation in which those arrayed on both sides had presented their arguments at their best.

A portion of the report of the Commission selected to consider this system, made after it had sifted the factors *pro* and *con,* and viewed the subject from all sides, both as a matter of fact and law, contains this significant statement:

"The method (referring to the old method), which is used in New York and most of the States in this country, grows more cumbersome as it becomes older, and in spite of efforts to make it less burdensome, is tending to break down of its own weight. The multiplication of records and complications of titles and the repeated expense of re-examination and the delays incidental thereto, should be avoided, if any possible method of doing so can be devised. We are clearly of the opinion that a system of registering titles may be put into operation in this State, in such manner as to avoid these and

other difficulties incidental to the present system and to become of much utility and advantage to conveyancers and owners of real property."

The New York Commission accordingly recommended the Torrens System of Land Title Registration and drafted a proposed act, which was passed by the legislature and went into effect on the first day of February, 1909.

There is now no question of its constitutionality.

The leading Massachusetts decision is that rendered by Mr. Justice Holmes, now sitting on the Bench of the United States Supreme Court, in *Tyler* v. *Judges of Court of Registration.*[3] *People ex rel. Deneen* v. *Simon,*[4] is also a leading case on this subject. In that case, it was insisted that by proceedings subsequent to the initial registration, any owner may be deprived of his property without due process of law. To this, the court said, quoting from *Arndt* v. *Griggs*:[5]

"The power of the State to regulate the tenure of real property within her limits and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted."[6]

On the general character and effect of the Torrens System, President Terry of the National Conference, says:

"Tested by business beneficence, the Torrens System would seem to satisfy, to the full, the most exacting requirements. Ease in the disposition of property, convenience of transfer, availability of assets, and values for commercial needs and mercantile contingencies, —all these attributes would seem to fairly attach to land under the ideal Torrens Law."

Uniformity of Decision on Uniform Laws.

The element of uniformity in these laws is a matter of equal importance, and this comes to pass by their universal adoption by the different States. To secure this there must be uniformity of judicial decision, if the work is to achieve its full accomplishment,

[3] 175 Mass. 71, 55 N. E. 812, 51 L. R. A. 433; 179 U. S. 405, 45 L. ed. 252, 21 Sup. Ct. 206.

[4] 176 Ill. 165. 52 N. E. 910, 44 L. R. A. 801, 68 Am. St. Rep. 175.

[5] 134 U. S. 316, 33 L. ed. 918, 10 Sup. Ct. 557.

[6] See also Waugh v. Glos, 246 Ill. 604, 92 N. E. 974, 138 Am. St. Rep. 259; Peters v. Duluth, 119 Minn. 96, 137 N. W. 390, 41 L. R. A. N. S. 1044; People ex rel. Smith v. Crissman, 41 Colo. 450, 92 Pac. 949; Robinson v. Kerrigan, 151 Calif. 40, 90 Pac. 129, 121 Am. St. Rep. 90; State ex rel. Douglas v. Westfall, 85 Minn. 437, 89 N. W. 175, 57 L. R. A. 297, 89 Am. St. Rep. 571; American Land Co. v. Zeiss, 219 U. S. 47, 55 L. ed. 82, 31 Sup. Ct. 200.

and the courts are inclined to follow the construction placed upon these acts by the decisions in other States, as stated in *Brown* v. *Brown*,[7] by RANSOM, J.:

"Learned counsel for the defendant makes a most persuasive argument for a ruling in this State, that a payee be given no immunity from equities existent between the maker and his immediate transferee. But these considerations are far outweighed, in my opinion, by the importance of nation-wide uniformity in the law as to commercial paper and by the many evidences that, in enacting the uniform statute, the legislature sought to secure uniformity in the application of the law, and not merely in its phraseology. When a question arises in one of the uniform statutes, and courts of this State have not yet passed upon the interpretation of the portions of the statute involved, I conceive it to be the duty of the trial courts, in the interest of a real uniformity in the application of these commercial enactments, to adopt and follow here the interpretation adopted by the courts of other commonwealths."[8]

The leading case on the subject of uniformity is that of *Commercial National Bank of New Orleans* v. *Canal-Louisiana Bank and Trust Co. et al*,[9] in which the Supreme Court of the United States declared, Mr. Justice HUGHES delivering the opinion of the Court, that the rule of construction established by the uniform warehouse receipts act requires that the cardinal principle of the act, which is to give effect to the mercantile view of documents of title, shall have recognition to the exclusion of any inconsistent doctrine which may have previously obtained in any of the States enacting it.

This principle of uniformity, which was once a beacon light of hope for those interested in the work of the Conference, is now clearly established.

GEORGE W. BATES.

Detroit, Michigan.

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[7] 91 Misc. 220, 154 N. Y. Supp. 1098.

[8] Cases from the federal courts and from Arkansas, Connecticut, Illinois, Iowa, Kentucky, Maine, Massachusetts, and Missouri are also cited by the court.

[9] 239 U. S. 520, 60 L. ed. 417, 36 Sup. Ct. 194.